IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1294 OF 2002
IN
SUMMARY SUIT NO.5853 OF 1998

M/s.Gwalior Oils Mills — Plaintiff

versus

M/s.Geekay Exim (India) Ltd. — Defendant

and

Global Trust Bank Limited — Applicant

V.Amin i/by B.Amin for plaintiff.
S.Purohit i/by Wadia & Ghandy & Co. for defendant

CORAM : S.C.DHARMADHIKARI, J.
DATE : 30th June 2005

PC :

1. On this Notice of Motion an ad-interim order was passed on 2nd May 2002 by Justice Kakade. This order records that the applicant bank, without prejudice to it's rights and contentions, is willing to deposit a sum of Rs.8.00 lakh in this Court and thereupon the amount was to be invested pending further orders in this Notice of Motion which was directed to be heard along with Notice of Motion No.1095 of 2002.

2. Notice of Motion No.1095 of 2002 is taken out

by the plaintiff-decree holder who has a decree in his favour in summary suit against defendants. In this Notice of Motion, the plaintiff-decree holder prays that an immovable property allegedly belonging to the defendants is being alienated, encumbered and disposed off to defeat the plaintiff's rights to execute the money decree in the summary suit. In other words, it was apprehended that once the property is disposed off plaintiffs-decree holder's right to execute the decree in accordance with law would be frustrated and defeated. It is on the basis of this apprehension that this Court was moved and ad-interim order in terms of prayer clause (b) was granted initially. Later on it was pointed out by the applicants who have taken out Notice of Motion No.1294 of 2002 that the immovable property which was apprehended to be disposed off, was in fact disposed off much prior to the injunction order passed by this Court. In other words, it was contended that there was an agreement in favour of the applicant. The applicant and defendants herein along with another borrower had availed of certain facilities from the applicant bank and in consideration thereof, an equitable mortgage by deposit of Title Deeds in respect of the land

situate at Agra Road, Village Nahur, Tal. Mulund, Mumbai Suburban District admeasuring approximately 30,806 sq. mtrs. bearing Survey No.92(Hissa No.1), Survey No.93, Survey no.62 and CTS Nos.548, 548(1 to 11) and 549 referred to as the suit land is created in applicant's favour. Thus, it was contended that this land is a security of the applicant bank and this could have been dealt with by it to enforce this mortgage and recover the amounts under the diverse facilities. However, instead of examining the claim of both sides, this Court by an ad-interim order on Notice of Motion no.1294 of 2002 accepted the statement of the applicant bank of deposit of Rs.8.00 lakh.

3. Now, both motions are placed before me for hearing and final disposal.

4. Learned advocate appearing for the plaintiff-decree holder in support of Notice of Motion No.1095 of 2002 concedes that this notice of motion is not the appropriate remedy for executing and/or enforcing the money decree. He seeks liberty to take out appropriate proceedings and in the light of this he does not press Notice of Motion No.1095 of 2002. Reserving liberty to

the plaintiff-decree holder to take out such proceedings as are permissible in law for execution of the money decree, and keeping all contentions open of both sides in that behalf, Notice of Motion No.1095 of 2002 is disposed off.

5. Insofar as Notice of Motion no.1294 of 2002 is concerned, Mr.Purohit vehemently contends that once the decree-holder has not taken out appropriate proceedings, then there is no need to keep the amounts deposited and lying in this Court. In any event, he states that decree holder has a money decree which cannot rank higher than that of the claim of the Applicant Bank. He further states that this issue should be examined and it should be decided as to whether the decree-holder is at all entitled to seek the relief which is sought for by him in his notice of motion as well as examine further issues pertaining to the rights of applicant and the plaintiff-decree holder arising out of rival claims.

6. In my view, in the light of the concession of the decree-holder insofar as his notice of motion, the issues raised by Mr.Purohit need not be gone into. The entire exercise would be

academic inasmuch as Notice of Motion No.1095 of 2002 is not being pressed and the prayer in the Notice of Motion No.1294 of 2002 insofar as setting aside of the order dated 19th April 2002 in the earlier Notice of Motion is concerned, has already been granted. That order does not survive once amounts have been brought in the Court. Therefore, there is no question of the injunction order remaining any longer. All that remains is whether the decree holder is entitled to take away any sums or the entire sum of Rs.8.00 lakh as claimed. That need not be examined in these proceedings. However, at the same time monies cannot lie in this Court indefinitely. In this view of the matter, putting the decree holder-plaintiff to some terms would protect not only his rights but also that of the applicant bank. In the light of the above, following order.

7. ORDER : A) Amount of Rs.8.00 lakh (Rs.Eight lakh only) which is deposited in this Court pursuant to the order dated 2nd May 2002 would continue to remain deposited for a period of two weeks to enable the decree-holder in Summary Suit No.5853 of 1998 to take out appropriate proceedings.

B) Needless to state that if appropriate proceedings are not taken out and/or directions are not sought in this period, it would be open for the applicant bank to withdraw the sums with accrued interest. Prothonotary and Senior Master of this Court is directed to hand over amount of Rs.8.00 lakh (Rs.Eight lakh only) with accrued interest, as referred above.

C) Notice of Motion No.1294 of 2002 disposed off accordingly.

D) Needless to state that Global Trust Bank (original applicant) is merged with Oriental Bank of Commerce. Oriental Bank of Commerce would be entitled to take away the monies unless appropriate orders are sought restraining such withdrawal.

E) As and when appropriate proceedings are instituted by the plaintiff-decree holder within the time stipulated above, needless to state that it shall give prior notice of 72 hours to the plaintiff’s advocate and serve a copy of the application as well as affidavit before obtaining any orders with regard to the amounts deposited

in this Court.

(S.C.DHARMADHIKARI, J.)